IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

W.P. Nos. 18591 and 18593 of 2004

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WRIT PETITION NO : 18591 of 2004

Between:

S.Manohar, S/o.Ramaswamy,
Dist.Cooperative Cental Bank Ltd., Hanamkonda Branch, Warangal.

..... PETITIONER

AND

1 The Dist.Cooperative Central Bank Ltd., rep.by its Person-in-charge committee, HO, Subedari, Hanamkonda, Warangal-506001.
2 The General Manager, District Cooperative Central Bank, Ltd., Hanamkonda.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly one in the nature of writ of mandamus declaring the impugned show cause notice in Rc.No.B9/Estt/2002-03 dated 04-10-04 issued by the second respondent by the order of the first respondent as totally illegal, without jurisdiction and violative of principles of natural justice and also in violation of the law declared by the Hon'ble Supreme court in 1994 SCC P.1074 (MD, ECIL Vs Karunakaran) and consequently set aside the same by directing the respondents to continue the petitioner in service with all consequential benefits.

Counsel for the Petitioner: MR.S.LAKSHMA REDDY

Counsel for the Respondents: MR.J.VENKATESWARA REDDY

WRIT PETITION NO : 18593 of 2004

Between:

V. Narayana, S/o. Sailu,
District Cooperative Central Bank Limited, Hanamkonda Branch,
Warangal.

..... PETITIONER

AND

1 The District Cooperative Central Bank Limited, Rep. by its Person-in-Charge Committee, HO, Subedari, Hanamkonda, Warangal - 506 001.
2 The General Manager, District Cooperative Central Bank Limited, Hanamkonda.

.....RESPONDENTS

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Counsel for the Petitioner:MR.S.LAKSHMA REDDY

Counsel for the Respondents: MR.J.VENKATESWARA REDDY

The Court at the admission stage made the following :

The Hon’ble Sri Justice

K.C. Bhanu

W.P. Nos. 18591 and 18593 of 2004

COMMON ORDER:

Both the writ petitions are filed challenging the show-cause Notice in Rc.No.B9/Estt/2002-03 dated 4.10.2004 issued by the 2nd respondent by the order of the 1st respondent as illegal and arbitrary and violative of principles of natural justice. Since the point *at* issue in both the writ petitions is one and the same, both the writ petitions are being disposed of by a common order at the request of learned counsel for both sides.

The brief facts in W.P.18593 of 2004 may be stated as follows:

For certain financial irregularities the petitioner was placed under suspension by the 2nd respondent by proceedings 25.7.2002. On 25.10.2002 a charge memo was issued framing single charge for which the petitioner submitted explanation denying the allegations. Not satisfied with the explanation, an Enquiry Officer was appointed on 7.10.2002. Again a new Enquiry Officer in supercession of the earlier Enquiry Officer was appointed on 19.12.2002. The impugned show-cause notice dated 4.10.2004 was issued stating that the enquiry report was already submitted on 10.9.2003. Challenging the same, the present writ petition is filed on the ground that the 1st respondent-Committee, who is the appellate authority as per the special Bye-Law No.13(c) of the 1st respondent-bank, is not the disciplinary authority and that before issuing the show-cause notice for infliction of punishment it is the duty of the respondents to furnish the enquiry report and ask for the explanation and, therefore, the action of the respondents amounts to prejudging the issue and the impugned proceedings are only an empty formality. Hence the present writ petition.

The respondents filed counter admitting about the suspension order, calling for the explanation and appointment of Enquiry Officer. It is further stated that the Enquiry Officer conducted the enquiry by giving fair and reasonable opportunity to the petitioner

to defend the charge levelled against him. The petitioner participated in the enquiry and availed the opportunity given to him. The Enquiry Officer in his report has held that the charge against the petitioner is proved. The disciplinary authority after taking into account the gravity and seriousness of the charge proved against the petitioner, proposed to impose the punishment of dismissal from service. Accordingly a show-cause notice was issued to the petitioner. The petitioner instead of submitting his explanation, approached this court and obtained interim orders. The petitioner is at liberty to file explanation and the disciplinary authority after considering the same may pass appropriate orders as per the service rules applicable to the petitioner. As per the special bye-laws governing the service conditions of the employees of the Bank, the competent authority to impose the proposed punishment of dismissal is General Manager. However, the Commissioner for Cooperation and Registrar of Cooperative Societies has prescribed the condition that notwithstanding the provisions of the Bye-law, the PIC Committee shall decide disciplinary matters of staff as a whole. Therefore, the PIC Committee of the Bank is fully empowered to take decision in this regard. As per the disciplinary proceedings, a body higher in status than the officer authorized to take disciplinary action shall be empowered to deal with and dispose of any appeals against the orders passed in disciplinary matters and that the impugned proceedings are strictly in accordance with law. Hence, the respondents pray to dismiss the writ petition.

The pleadings in W.P. No. 18593 of 2004 may be stated as follows:

The petitioner while working as In-charge Assistant Manager was placed under suspension by proceedings dated 25.7.2002 for certain financial irregularities. A charge sheet dated 25.10.2002 was issued framing two charges for which the petitioner gave explanation denying the allegations. Not satisfied with the said explanation, the 1st respondent appointed an Enquiry Officer on 19.12.2002. In the enquiry proceedings, the Bank has not examined

any witnesses nor produced any documents nor supplied the documents to the petitioner. Thereafter the impugned show-cause notice dated 4.10.2004 was given stating that the enquiry report dated 14.8.2003 was furnished to the 2nd respondent. Aggrieved by the same, the present writ petition is filed.

The grounds of attack are similar to the grounds taken in the other writ petition i.e. W.P. No.18591 of 2004. The counter affidavit filed by the respondents would go to show admitting about issuance of charge sheet, calling for the explanation and appointment of Enquiry Officer. Basing on the enquiry report a show-cause notice was issued. With regard to the legal pleas, they are similar to the one taken in W.P. 18591 of 2004. Hence, it is redundant to reproduce the same.

Learned counsel for the petitioners raised two contentions, firstly, that the impugned proceedings has been issued not by the disciplinary authority but by the Committee of the person-in-charge, which is the appellate authority as per the Special Bye-Law No.13 (c) and therefore the petitioners have lost their valuable right of appeal to the 1st respondent-Committee and, secondly, that the enquiry report has not been furnished to the petitioners and before issuing the impugned proceedings no explanation is called for with regard to the enquiry report and therefore the impugned proceedings are liable to be set aside.

On the other hand, the learned standing counsel for the respondents contended that the right of appeal has not been lost. When a disciplinary order is passed by a person or body, appeal lies to the body higher in status than the officer authorized to take disciplinary action and therefore the first contention is not sustainable in law. Insofar as the second contention of the learned counsel for the petitioners is concerned, he contended that the enquiry report has been sent along with the show-cause notice and no prejudice has been shown in not supplying the enquiry report. Even assuming for a moment that it has not been supplied, in any view of the matter, the

grounds can as well be agitated before the disciplinary authority. Hence, he prays to dismiss the writ petitions.

As per Clause 13(c) of the Special Bye-Laws governing the service conditions of the employees of Warangal District Cooperative Central Bank, the Executive Committee is the appellate authority in respect of all other employees except Secretary, Assistant Secretary, Manager, Development officer, Executive Officer and Assistant Executive Officer. As per Clause 13, the authority to impose punishment is the President in respect of all other employees except the abovementioned Officers. As seen from these bye-laws, the Managing Committee is the appellate authority in respect of major penalties that may be imposed by the President of the Bank. Placing reliance on these special bye-laws, the learned counsel for the petitioners vehemently contended that the petitioners have lost their valuable right of appeal to the Committee. It is not in dispute that the impugned proceedings dated 4.10.2004 were issued by the General Manager by the Order of the Committee of the Persons-in-charge of the Bank. As seen from the impugned proceedings, the Committee of PIC of the Bank by its meeting dated 15.9.2004 vide Resolution No.7 considered the matter relating to the charge and allegations, explanations of the delinquents and resolved to propose punishment of dismissal from service of the Bank. Therefore, the petitioners in both the writ petitions were called upon to show-cause as to why the proposed punishment of dismissal from service should not be imposed.

The Commissioner for Cooperation and Registrar of the Cooperative Societies vide proceedings No.Rc.34861/2003 Z-V/6 dated 27.2.2004 in exercise of powers vested in him under Section 32(7) (a) of the A.P. Cooperative Societies Act appointed the Committee of Persons to manage the affairs of Warangal District Cooperative Central Bank Limited for a period of six months from the date of expiry of the term of the previous Committee of Persons-in-

Charge or till the elections to the Managing Committees of the Society is conducted, whichever is earlier. It is stated in these proceedings that the Committee of Persons as appointed shall, subject to the control of the of the Government or as the case may be of the Registrar and subject to such instructions or directions as they may issue, from time to time have power to exercise all or any of the functions of the Committee as per the Bye-laws of the Society. It is also indicated that notwithstanding the provisions of the byelaw, PIC Committee shall adhere to the directions, *inter alia*, that all matters relating to sanction of loan, transfers, and disciplinary matters of staff etc. shall only be decided by the PIC Committee as a whole.

Therefore, the above proceedings make it clear that the PIC Committee is competent to decide the disciplinary matters of the Staff. This disciplinary power is conferred on PIC Committee notwithstanding the provisions of the byelaws of the respondent-Bank. Therefore, the above provisions make it clear that the PIC Committee will be having disciplinary control over the staff. So, the contention of the learned counsel for the petitioners that the PIC Committee, which is an appellate authority, has no jurisdiction to issue the impugned proceedings is unsustainable and wholly devoid of merit.

With regard to the loosing of vested right of filing the appeal, no doubt, as per byelaws the PIC Committee is the appellate authority, but when the PIC Committee acts as a disciplinary authority, it does not mean the writ petitioners have lost their valuable right of appeal. On this aspect, the learned standing counsel for the respondents relied upon the Memorandum of Settlement dated 21.9.1977 entered in between the Workmen employed by the Cooperative Central Banks represented by the A.P. Bank Employees' Federation, Hyderabad and 25 District Cooperative Central Banks wherein the terms of settlement have been reduced into writing. Chapter XIII of the Memorandum of Settlement deals with disciplinary proceedings. As per this Chapter, the Principal Officer of a Bank or an alternate officer at the Head Office of the Bank

appointed by him for the purpose, shall decide which officer (s) shall be empowered to hold enquiry and take disciplinary action in the case of each office or establishment or branch. He shall also decide which officer or a body higher in status than the officer authorized to take disciplinary action shall be empowered to deal with and dispose of any appeals against orders passed in disciplinary matters. The names of such officers or the body who are empowered to pass the original orders or hear and dispose of the appeal shall, from time to time be published on the bank's notice board.

For this purpose, learned counsel for the petitioners relied upon a decision of the apex court in **Surjit Ghosh v. Chairman & M.D., United Commercial Bank**[1] wherein it is held:

> "This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases, while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted.

The above decision has no application to the present facts of the case because there are circular instructions in this case that the higher authority can exercise of the powers of the disciplinary authority. In this case, right of appeal is provided even against the orders passed by the PIC Committee. So, the above settlement

makes it very clear that an officer or body higher in status than the officer authorized to take disciplinary action shall be empowered to deal with and dispose of the appeals. In the counter it is stated that the General Body of the Bank is the higher body in status to the PIC Committee. Therefore, even if the PIC Committee is the disciplinary authority, an appeal shall lie to the General Body of the Bank. Therefore, from the above provisions it is clear that the petitioners have not lost their valuable right. Hence, the first contention of the learned counsel for the petitioners is wholly devoid of merit and untenable.

The second contention of the learned counsel for the petitioners is that before issuing the impugned proceedings, the enquiry report has not been furnished to the writ petitioners calling for their remarks with regard to conducting of enquiry. The Rules or byelaws do not indicate that before issuing a show-cause notice for the proposed punishment the disciplinary authority has to call for the remarks of the delinquent as to the findings of the Enquiry Officer. For this purpose, learned counsel for the petitioners placed strong reliance on the decision of the apex court in **Managing Director, ECIL v. B. Karunakar**[2] wherein it is held:

> "Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it".

It is further held:

> "Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural

> justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject".

There is no dispute about the proposition of law laid down by the Constitution Bench of the apex Court. Since the show-cause notice along with the enquiry report has been furnished to the writ petitioners, there is every opportunity for the writ petitioners to give reply to the enquiry officer's findings. So, in this case reasonable opportunity is given to the petitioners to defend themselves against the findings of the Enquiry Officer. In this case, the first stage has not been commenced since the petitioners have not given reply to the show-cause notice. Therefore, it is not a case of denial of reasonable opportunity to challenge the findings of the Enquiry Officer. Hence, the above decision has no application to the present facts of the case. None of the rules or byelaws of the respondent-Bank provides that the enquiry report has to be furnished to the delinquent in the first instance calling for his explanation or remarks and thereafter a show-cause notice for the proposed punishment should be given. It is true that reasonable opportunity demands that the employee should get an opportunity not only to represent on the evidence adduced during the enquiry but also on the findings of the Enquiry Officer so that the disciplinary authority may be able to have full appreciation. The enquiry continues till the disciplinary authority considers the evidence which includes the report of the Enquiry Officer and the enquiry is reserved for recording the findings and the penalty. In the impugned proceedings it is specifically stated that the copy of the enquiry report is enclosed along with the show-cause notice. It is not specifically denied or disputed in the affidavits filed in support of the writ petitions that no enquiry report is furnished to the petitioners. But, the contention of the learned counsel for the petitioners is that preceding

the impugned proceedings the enquiry report has to be furnished to the petitioners calling for the explanation, which, in my considered opinion, cannot be furnished in the absence of any byelaw or rule governing the service conditions of the writ petitioners. Even assuming for a moment that the enquiry report has not been furnished to the writ petitioners, the same cannot be a ground to set aside the impugned proceedings. To what extent the non-supplying of enquiry report caused prejudice to the writ petitioners is not averred or stated in the affidavits filed in support of the writ petitions. In any view of the matter, this aspect can be decided by the disciplinary authority and the petitioners would be given liberty to give the reasons for prejudice in not supplying the enquiry report to the disciplinary authority and the same shall have to be considered by the disciplinary authority in accordance with the rules and the byelaws. Considering the serious nature of allegations, the Committee has decided to propose the punishment in the show-cause notice. Under no stretch of imagination it can be said that the disciplinary authority has come to pre-conclusion or pre-judged the issue with regard to the punishment. It is for the disciplinary authority to accept or not to accept the reasons in the explanation that may be furnished by the writ petitioners. Therefore, the plea with regard to non-supply of enquiry report and in what manner and in what way it caused prejudice to the petitioners, is left open.

For the aforesaid reasons, the impugned proceedings do not suffer from any legal infirmities so as to call for interference of this Court. All the defences are left open. After issuance of show-cause notice the petitioners have approached this court and obtained stay. There is no opportunity for the petitioners to give explanation to the impugned proceedings. Therefore, an opportunity has to be given to the petitioners for giving the explanation and thereafter appropriate orders have to be passed by the disciplinary authority duly taking into account the explanation that may be submitted by the petitioners.

The writ petitions are accordingly disposed of with a direction to the petitioners to submit their explanation within a period of two weeks from the date of receipt of a copy of this order and thereafter appropriate orders have to be passed by the disciplinary authority duly taking into account the explanation that may be submitted by the petitioners, in accordance with the rules and the byelaws of the respondent-Bank.

K.C. Bhanu, J.

Date: 30--12—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Person-in-charge committee, The Dist.Cooperative Central Bank Ltd., HO, Subedari, Hanamkonda, Warangal-506001.

2 The General Manager, District Cooperative Central Bank, Ltd., Hanamkonda.

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